WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

SYNOPSIS REPORT

Decisions Issued in December 2008

The Board's monthly reports are intended to assist public employers covered by a grievance procedure to monitor significant personnel-related matters which came before the Grievance Board, and to ascertain whether any personnel policies need to be reviewed, revised or enforced. W. Va. Code §18-29-11(1992). Each report contains summaries of all decisions issued during the immediately preceding month.

If you have any comments or suggestions about the monthly report, please send an e-mail to wvgb@wv.gov.

NOTICE: These synopses in no way constitute an official opinion or comment by the Grievance Board or its administrative law judges on the holdings in the cases. They are intended to serve as an information and research tool only.

TOPICAL INDEX

COUNTY BOARDS OF EDUCATION

PROFESSIONAL PERSONNEL

KEYWORDS: DEFAULT; CHIEF ADMINISTRATOR; LEVEL ONE; FAILURE TO RESPOND; PROPER FILING

CASE STYLE: SWICK, ET AL. v. SOUTH BRANCH CAREER AND TECHNICAL CENTER

DOCKET NO. 2008-1351-CONSDEF (12/8/2008)

PRIMARY ISSUES: Did default occur when Grievants filed their level one grievance with Respondent's Attorney, but not with his chief administrator, and no level one proceeding was conducted?

SUMMARY: Grievants filed a written notice of default at level one of the grievance procedure based on the failure of Respondent to schedule a level one hearing. The parties submitted this issue on the record based on stipulated facts. These facts indicate that Grievants' counsel filed grievance forms with the Grievance Board on or about February 27, 2008. On that same date, a copy of the grievance was submitted to counsel for Respondent. West Virginia Code requires that an employee file a written grievance with the chief administrator stating the nature of the grievance, the relief requested, and requesting either a conference or hearing. It is undisputed that the grievance was not filed with the Director of the South Branch Career and Technical Center. Pursuant to the statutory grievance procedure, no default occurred, because the chief administrator was not notified as required by proper filing. Default is DENIED.

KEYWORDS: SELECTION; ARBITRARY AND CAPRICIOUS

CASE STYLE: JARVIS v. MCDOWELL COUNTY BOARD OF EDUCATION

DOCKET NO. 07-33-408 (12/19/2008)

PRIMARY ISSUES: Whether Grievant's non-selection for the posted position was an improper, or arbitrary and capricious decision by Respondent.

SUMMARY: Grievant, a principal employed by the McDowell County Board of Education, challenged his non-selection for the position of Principal at the New War K-8 school, asserting allegations of a "tainted and manipulated" hiring process, harassment by his supervisor and favoritism. The facts established that an interview committee was appointed, interviews conducted, and a consensus was reached regarding the recommendation of the successful applicant.

In November 2001, DOE intervened in the operations of the McDowell County Board of Education. The State Superintendent of Schools is under no obligation to comply with § 18A-4-7a in making the final decision in the principal's selection now challenged by Grievant. No showing has been made that the State Superintendent acted arbitrarily or capriciously in filling this position. Respondent MCBOE maintains it permissibly evaluated the candidates, determining that an applicant other than Grievant was more suited for the position. Respondent provided rationale for recommending the successful applicant which included the statutory selection criteria applicable to county boards of education. The evidence does not establish that Grievant was the more qualified applicant, or that there was a substantial flaw in the selection process. Grievant failed to establish by a preponderance of the evidence that the selection was arbitrary and capricious or clearly wrong. Grievance DENIED.

KEYWORDS: SELECTION; PRINCIPAL; QUALIFICATIONS; FIRST SET OF FACTORS; SUPERINTENDENT'S RECOMMENDATION; STATE INTERVENTION

CASE STYLE: HENRY v. MCDOWELL COUNTY BOARD OF EDUCATION AND DEPARTMENT OF EDUCATION

DOCKET NO. 07-33-009 (12/8/2008)

PRIMARY ISSUES: Should Grievant have been the successful applicant for a principal's position, and was the process flawed?

SUMMARY: Grievant contends that he should have been selected over the successful applicant for the position of Principal of the McDowell County Career and Technology Center. He argues that the selection process was flawed, the statutory criteria were not appropriately evaluated, he was more qualified, and the provisions of § 18A-4-7a providing for the selection of the most qualified applicant should control the analysis. The evidence established that an interview committee was properly appointed, interviews conducted, and a consensus was reached regarding the recommendation of Mr. Smith, based upon his more relevant experience in secondary administration. The statutory criteria were evaluated and considered, the selection of Mr. Smith was based upon relevant considerations, and it did not reflect an abuse of the Board of Education's discretion in such matters. In November 2001, the State Department of Education intervened in the operations of the McDowell County Board of Education. The State Superintendent of Schools is under no obligation to comply with § 18A-4-7a in making the final decision in the principal's selection now challenged by Grievant. No showing has been made that the State Superintendent acted arbitrarily or capriciously in filling this position. The grievance is denied.

TOPICAL INDEX

COUNTY BOARDS OF EDUCATION

SERVICE PERSONNEL

KEYWORDS: COMPENSATION ; ERROR; MISTAKE

CASE STYLE: STRAIGHT, ET AL. v. KANAWHA COUNTY BOARD OF EDUCATION

DOCKET NO. 2008-0832-CONS (12/8/2008)

PRIMARY ISSUES: Whether Grievants (individually and/or collectively) are entitled to compensation higher than the pay grade attributed to the summer job classification.

SUMMARY: Grievants were employed as General Maintenance with Respondent's summer maintenance program of 2007. Grievants worked on summer crews that cleaned and repaired heating, ventilation and air conditioning equipment at a number of county schools. In that some of the Grievants were compensated at a higher pay grade for the same or similar work in prior summers, it is contended that some or all of the Grievants were entitled to a pay grade higher than the pay grade attributed to the job classification. Respondent maintains that Grievants were properly compensated for the job classification for which they were hired.

Previously, some Grievants were paid under the Heating and Air Conditioning Mechanic II pay scale which is higher than the General Maintenance pay scale. Respondent contends error. The work performed by Grievants is classified as General Maintenance. Grievants should be paid in accordance with proper classification and pay grade. West Virginia Code, as highlighted by Grievants, does not prohibit correction of past error or mandate the continuation of erroneous salary. This grievance is denied

KEYWORDS: COMPENSATION; SUMMER ASSIGNMENTS; SPECULATIVE RELIEF; DAMAGES; TORT

CASE STYLE: WHITE, ET AL. v. MONONGALIA COUNTY BOARD OF EDUCATION

DOCKET NO. 2008-0586-CONS (12/16/2008)

PRIMARY ISSUES: Should Grievants receive financial damages due to Respondent's failure to properly award summer substitute and extra duty assignments?

SUMMARY: Grievants challenged Respondent's system for awarding summer bus operator assignments, including substitute assignments for absent regular summer employees and summer extra duty assignments. At level one, the grievance was granted, in that it was concluded that Respondent violated statutory provisions requiring that summer and extra duty assignments be offered to regular employees pursuant to a seniority-based rotation. However, Grievants' request for financial damages as relief, pursuant to their theory that they would have received additional assignments if the proper procedure had been followed, would require speculative relief and tort-like damages, which are unavailable from the Grievance Board. Grievance DENIED.

KEYWORDS: DISMISSAL; TERMINATION; IMPROVEMENT PLAN; PERFORMANCE EVALUATION; UNSATISFACTORY PERFORMANCE; STATUTORY REQUIREMENTS; DUE PROCESS; CLOSED HEARING

CASE STYLE: ROMANO v. MARION COUNTY BOARD OF EDUCATION

DOCKET NO. 2008-1504-MRNED (12/16/2008)

PRIMARY ISSUES: Whether Respondent could dismiss Grievant for unsatisfactory performance when no performance evaluation had been completed?

SUMMARY: Grievant was terminated from her employment as a probationary special education aide/LPN, when she was not able to successfully complete a Plan of Improvement. Grievant did not receive a formal evaluation prior to the recommendation to terminate her employment. W. Va. Code § 18A-2-8 requires county board of education personnel to complete a formal evaluation of the employee's performance prior to the recommendation to terminate her employment. Respondent was aware of this requirement. Despite Grievant's difficulties in learning her job responsibilities, Respondent simply did not do what the statute requires. Grievant's claim that her due process rights were violated because Respondent did not allow the hearing she was offered to be open to the public was without merit. Grievance GRANTED.

KEYWORDS: MOOTNESS, MOOT, RELIEF, REMEDY, DISCIPLINE

CASE STYLE: SUMMERS v. LOGAN COUNTY BOARD OF EDUCATION AND BARBARA PORTER, INTERVENOR

DOCKET NO. 08-23-002 (12/10/2008)

PRIMARY ISSUES: Is a grievance moot where the Grievance Board has no authority to grant the remedy sought by Grievant and the Grievant is no longer subject to alleged improper conduct of her supervisor?

SUMMARY: Grievant alleges that her previous supervisor, an elementary school principal, harassed her, discriminated against her and retaliated against her. She alleges the supervisor did so by requiring Grievant to eat lunch in a supply room, refusing to speak to the Grievant, preventing Grievant from speaking with co-workers and parents, attempting to strand Grievant at the elementary school without a vehicle and a plethora of other acts.

At Level Two, Respondent BOE, held that the supervisor had the authority to distribute the work load of the Grievant. However, the BOE found that the Grievant had proven some incidents of unacceptable behavior on the part of the supervisor. The BOE admonished the supervisor for her conduct and instructed her to perform supervisory tasks in a professional manner. Grievant challenges this decision. The supervisor has intervened in this grievance.

The Grievant no longer works in the school where the Intervenor serves as supervisor. She has no contact with the supervisor and is not under the supervisor's direction. Grievant seeks greater punishment for the supervisor. This tribunal has no authority to increase the intervening supervisor's punishment. This grievance is moot. The grievance is denied.

KEYWORDS: NON-SELECTION, SELECTION, SERVICE PERSONNEL, QUALIFICATION

CASE STYLE: BOOTHE v. JACKSON COUNTY BOARD OF EDUCATION AND JANINE SAYRE, INTERVENOR

DOCKET NO. 2008-0210-JACED (12/9/2008)

PRIMARY ISSUES: non-selection

SUMMARY: Grievant alleges error in the selection process for the position of Supervisor of Transportation and maintains that he was the most qualified applicant for the position.

Respondent maintains that there was no error in the selection process and argues that the Grievant was not the most qualified applicant.

Grievant has not met his burden of proving, by a preponderance of the evidence, that there was a flaw in the selection process sufficient to suggest that the outcome may be reasonably different. The BOE's hiring decision was not unreasonable. This grievance is denied.

KEYWORDS: SUBSTITUTE, ROTATION LIST

CASE STYLE: MARCUM v. WAYNE COUNTY BOARD OF EDUCATION

DOCKET NO. 2008-0764-WAYED (12/23/2008)

PRIMARY ISSUES: Whether Grievant is entitled to back pay where there was no error by the BOE in utilizing its substitute custodian rotation list?

SUMMARY: Grievant alleges that the BOE failed to properly include him on a substitute custodian rotation list which caused the Grievant's non-selection for a substitute assignment. Respondent BOE maintains that there is no indication that it deviated from the substitute custodian rotation list.

The only evidence that supports the Grievant's position is his assertion that he was told, via a brief telephone conversation, that he was excluded from the substitute custodian rotation list for the particular area in which Grievant is available to work.

There is no indication that the BOE selected substitute custodians in a manner inconsistent with West Virginia Code § 18A-4-15(b). This grievance is denied.

KEYWORDS: UNIFORMITY, DISCRIMINATION, FAVORITISM, SIMILARLY SITUATED, MULTI-CLASSIFICATION, LIKE DUTIES

CASE STYLE: LYNCH, ET AL. v. RALEIGH COUNTY BOARD OF EDUCATION

DOCKET NO. 07-41-365 (12/10/2008)

PRIMARY ISSUES: Whether Grievants should have 261-day contracts rather than 240-day contracts.

SUMMARY: Grievants, all 240-day employees, argue they are similarly situated to employees working under 261-day contracts, and are therefore entitled to 261-day contracts too. Grievants allege they are subject to discrimination and/or favoritism because they are not uniformly compensated. Grievants Chapman, Lynch and Toney did not meet their burden of proving they have been subjected to discrimination or favoritism. Grievants Akers and Tzystuck have met their burden of proving that other, similarly situated employees are favored over them by having 261-day contracts while the Grievants have only 240-day contracts. The consolidated grievance is therefore granted in part and denied in part.

KEYWORDS: UNIFORMITY; DISCRIMINATION; CONTRACT TERMS; VACATION DAYS; LIKE ASSIGNMENTS AND DUTIES

CASE STYLE: GUNNOE, ET AL. v. RALEIGH COUNTY BOARD OF EDUCATION

DOCKET NO. 2008-0834-CONS (12/31/2008)

PRIMARY ISSUES: Whether uniformity violations and discrimination occurred due to Respondent's provision of a 261-day contract with paid vacation to one custodian?

SUMMARY: Grievants are employed as custodians at various facilities by Respondent. They allege that the provision of a 261-day contract, including paid vacation days, to another employee in their classification, violates statutory uniformity requirements and constitutes discrimination.

Although Grievants did prove that they perform substantially similar duties to those of the 261-day custodian, it was found that neither back pay nor the prospective provision of 261-day contracts would be appropriate under the circumstances presented. As in the Supreme Court's decision in Airhart, infra, Grievants knew of the situation for many years and accepted their contracts without complaint; in addition, the evidence did not establish intentional discrimination on Respondent's part. As to Grievants' contention that they should receive 261-day contracts now and in the future, due to Respondent's violations of statute, this would be inappropriate, in that the 261-day employee has retired, and no current employees have such a contract. Therefore, the grievance is granted in part, but relief is denied.

TOPICAL INDEX

STATE EMPLOYEES

KEYWORDS: CLASSIFICATION, REALLOCATION, BEST FIT

CASE STYLE: RENNER v. DIVISION OF CORRECTIONS/ST. MARYS CORRECTIONAL CENTER AND DIVISION OF PERSONNEL

DOCKET NO. 2008-0076-MAPS (12/18/2008)

PRIMARY ISSUES: Whether the Grievant was properly classified as an Administrative Assistant I, where her duties involve photocopying, supervising inmates, assisting inmates in legal research and ordering reading material?

SUMMARY: Grievant's position is classified in the ASA 1 classification. She asserts that her position is not properly classified and that the Librarian classification is the appropriate classification. Respondent DOP asserts that the ASA 1 classification is the "best fit" for the Grievant's position, and the Librarian classification is meant for only those positions that require "professional" library work.

The Grievant's position involves photocopying, supervising inmates, assisting inmates in legal research and ordering reading material. Her position is administrative in nature. When compared to the other classification at issue, the ASA 1 classification is the "best fit." This grievance is denied.

KEYWORDS: DEFAULT, LEVEL ONE HEARING, JUSTIFIED DELAY, NEGLIGENCE

CASE STYLE: GRAY v. LOGAN COUNTY HEALTH DEPARTMENT AND DIVISION OF PERSONNEL

DOCKET NO. 2008-1446-LOGCHDEF (12/30/2008)

PRIMARY ISSUES: Whether Respondent's default was justified delay where the chief administrator only worked one day, mistook the grievance for a "chart", and an employee the Grievant perceived to be her supervisor knew the grievance was filed with the Supervisor?

SUMMARY: Grievant avers that the Health Department is in default because a Level One hearing was not held within ten days of the filing of the grievance. Respondent counters and argues that the Director of the Health Department committed "excusable neglect" and, therefore, default is inappropriate.

The Respondent did not hold a Level One conference or hearing within the applicable time frames. Its failure to hold a hearing or conference was because the Director mistook the grievance for a "chart" and only comes into the workplace for one day per week. Another employee had knowledge that the grievance was in the Director's stack of information to be signed, yet failed to timely inform the Director. The Respondent's delay is not justified in this circumstance. Default is granted.

KEYWORDS: DEFAULT, WAIVER, JUSTIFIED DELAY, EXCUSE

CASE STYLE: DUNLAP v. DEPARTMENT OF ENVIRONMENTAL PROTECTION

DOCKET NO. 2008-0808-DEPDEF (12/8/2008)

PRIMARY ISSUES: Whether employer was excused from default by waiver or statutory defense?

SUMMARY: Grievant claims that DEP is in default because a level one decision was not rendered within fifteen days. Respondent counters that the last hearing was held on April 9, 2008, and Grievant agreed that the fact/law proposals would be submitted by both parties on May 31, 2008. DEP contends that Grievant waived her right to a decision within fifteen days. Grievant insists that she did not waive the time line for rendering a decision but only agreed to a time for submitting the fact/law proposals. Respondent did not establish that Grievant waived the applicable time limit for issuing a level one decision. Respondent also failed to prove that they were prevented from rendering a decision by one of the reasons allowed for delay, established in W. Va. Code § 6C-2-3. Accordingly, Grievant's claim for default is GRANTED.

KEYWORDS: DISCIPLINE; MISUSE OF COMPUTER; DEFAULT REMEDY

CASE STYLE: MCMORRIS v. DIVISION OF CULTURE AND HISTORY

DOCKET NO. 07-C&H-316D (12/19/2008)

PRIMARY ISSUES: After a finding of default, did Respondent prove Grievant's e-mail from her agency-issued computer and e-mail including a link that espoused her political views and specifically referencing a state senator warranted a 3 day suspension.

SUMMARY: Default remedy was granted for Grievant who alleged she was improperly suspended for 3 days for forwarding an e-mail with a link to a political website where she espoused her political views referencing a state senator. Respondent met its burden. Grievance is denied.

KEYWORDS: JURISDICTION; SALARY ADJUSTMENTS

CASE STYLE: EVANS, ET AL. v. DEPARTMENT OF HEALTH AND HUMAN RESOURCES AND DIVISION OF PERSONNEL

DOCKET NO. 07-HHR-168 (12/30/2008)

PRIMARY ISSUES: Whether the Grievance Board has subject matter jurisdiction.

SUMMARY: Grievants are employed by the West Virginia Department of Health and Human Resources in various offices through out West Virginia. Grievants filed substantially similar grievances claiming discrimination resulting from an April 25, 2007, agency wide memo from Secretary Martha Yeager Walker regarding recent pay increases as a result of legislative and executive actions. The authority to correct was not with the employer, and the Grievance Board has no authority to order the Legislature or the Governor's office to enact a similar provision to remedy the disparity in pay increases. Grievance DISMISSED for lack of jurisdiction.

KEYWORDS: JURISDICTION; SALARY ADJUSTMENTS

CASE STYLE: JUDY, ET AL. v. DEPARTMENT OF HEALTH AND HUMAN RESOURCES AND DIVISION OF PERSONNEL

DOCKET NO. 2008-0841-CONS (12/30/2008)

PRIMARY ISSUES: Whether the Grievance Board has subject matter jurisdiction.

SUMMARY: Grievants are employed by the West Virginia Department of Health and Human Resources in various offices through out West Virginia. Grievants filed substantially similar grievances claiming discrimination resulting from an April 25, 2007, agency wide memo from Secretary Martha Yeager Walker regarding recent pay increases as a result of legislative and executive actions. The authority to correct was not with the employer, and the Grievance Board has no authority to order the Legislature or the Governor's office to enact a similar provision to remedy the disparity in pay increases. Grievance DISMISSED for lack of jurisdiction.

KEYWORDS: MISCLASSIFICATION; REALLOCATION; COMPLEXITY; INCREASING DUTIES; BEST FIT

CASE STYLE: MILLER v. WORKFORCE WEST VIRGINIA AND DIVISION OF PERSONNEL

DOCKET NO. 2008-0235-DOC (12/23/2008)

PRIMARY ISSUES: Whether Grievant's position should be classified as Employment Programs Manager 1 rather than Employment Programs Specialist, Senior.

SUMMARY: Grievant has been employed as an Employment Programs Specialist, Senior since 1997, and in that time her job duties have changed. Grievant is responsible for the operation of the Quarterly Census of Employment and Wages Program. Given the increasing duties of Grievant since her previous supervisor retired, the predominance of her duties shifted to fall more within the Employment Programs Manager 1 classification than her former classification. The grievance is GRANTED.

KEYWORDS: PAY EQUITY; INTERNAL EQUITY;PAY PLAN IMPLEMENTATION POLCY

CASE STYLE: JOURNELL, ET AL. v. DEPARTMENT OF ENVIRONMENTAL PROTECTION/DIVISION OF MINING AND RECLAMATION

DOCKET NO. 2008-0609-CONS (12/22/2008)

PRIMARY ISSUES: Whether pursuant to the internal equity provision of DOP's Pay Plan Implementation Policy are Grievants entitled to a pay raise.

SUMMARY: An employee recently hired as an Environmental Resources Specialist 2 by Respondent was hired at a rate of pay higher than Grievants, long standing employees with the same classification. Grievants contend this is improper. Grievants allege entitlement to an increase in pay, pursuant to the Internal Equity provision of the Division of Personnel's Pay Plan Implementation Policy. Respondent disagrees.

Applicable statutes, rules and regulations coupled with relevant case law provide that classified employees are to be compensated within their pay grade. Grievants are being paid within the pay range of the pay grade assigned by the Division of Personnel to their respective classification. The salary of the newest hire in Grievants' classification is consistent with the Internal Equity provision of Personnel's Pay Plan Implementation Policy. Moreover, even if the salaries in Grievants' unit were inconsistent with the Internal Equity provision, this policy provides that it is within the agency's discretion to recommend a salary increase of up to 10% for employees who fit within the situation described in the policy. However, such increases are discretionary on the part of the employer, and all discretionary pay increases are currently prohibited by the Governor's office. This grievance is denied.

KEYWORDS: PROBATIONARY; DISCIPLINARY DISMISSAL; INDICTMENT; HONESTY; LARCENY

CASE STYLE: COSNER v. DIVISION OF HIGHWAYS

DOCKET NO. 2008-0633-DOT (12/23/2008)

PRIMARY ISSUES: Whether Respondent proved the charges against Grievant, and was justified in dismissing her prior to the end of her probationary period.

SUMMARY: Grievant was dismissed from her probationary employment after her indictment on three felony counts was published in the local newspaper. This report, one week after Grievant began her employment, came as a total surprise to Respondent, as Grievant had not made her employer aware of the possibility that she would be indicted. Grievant's indictment, and her failure to disclose the charges against her, caused Respondent to question Grievant's integrity, and lose confidence in her. Grievant subsequently pled guilty to a misdemeanor, and was sentenced to three years' probation. Respondent demonstrated sufficient justification for the dismissal of Grievant during her probationary period. Grievance DENIED.

KEYWORDS: RESIGNATION, CONSTRUCTIVE DISCHARGE, RESCIND, REASONABLE PERSON

CASE STYLE: FALQUERO v. DEPARTMENT OF ENVIRONMENTAL PROTECTION

DOCKET NO. 2008-1596-DEP (12/16/2008)

PRIMARY ISSUES: Whether Grievant's work environment was so intolerable that it constituted a constructive discharge? Whether Grievant may be bound by a resignation that she rescinded before it was accepted by her employer?

SUMMARY: Grievant alleges that her work situation constituted a hostile work environment because of the conduct of the co-workers in her office suite. She avers therefore, that her resignation was a constructive discharge. Grievant also claims that she rescinded her resignation before DEP took any action to accept it. Since her offer to resign was not accepted before it was withdrawn, DEP cannot accept it after she rescinded it. DEP responds that they had taken steps to ease Grievant's work environment and that her resignation was voluntary. DEP argues that Grievant's resignation was binding upon being tendered to her supervisor and DEP was under no obligation to accept Greivant's recision of her resignation.
Unless the employment contract is "at-will" an employee's resignation is an offer to end the contract that does not become effective until it is accepted. Grievant rescinded her resignation prior to it being accepted by DEP. Therefore, the offer to resigned was withdrawn before it was accepted and the resignation is void. The grievance is GRANTED, in part.

KEYWORDS: SALARY; PAY; INTERNAL EQUITY; DISCRIMINATION; PAY PLAN IMPLEMENTATION POLICY; EQUAL PAY; DISCRETIONARY; GOVERNOR'S MORATORIUM

CASE STYLE: HARRIS v. DEPARTMENT OF TRANSPORTATION/DIVISION OF HIGHWAYS

DOCKET NO. 2008-1594-DOT (12/15/2008)

PRIMARY ISSUES: Should Grievant receive a pay increase pursuant to the Pay Plan Implementation Policy?

SUMMARY: Grievant alleges entitlement to an increase in pay, pursuant to the internal equity provision of the Division of Personnel's Pay Plan Implementation Policy. However, such increases are discretionary on the part of the employer, and all discretionary pay increases are currently prohibited by the Governor's office. In addition, Grievant failed to prove his salary is the result of discrimination. Grievance DENIED.

KEYWORDS: SELECTION; SENIORITY; ARBITRARY AND CAPRICIOUS; QUALIFICATIONS; SUPERVISOR

CASE STYLE: FREELAND v. DEPARTMENT OF HEALTH AND HUMAN RESOURCES/HOPEMONT HOSPITAL

DOCKET NO. 2008-0225-DHHR (12/23/2008)

PRIMARY ISSUES: Should Grievant have been selected for a supervisor position over the successful applicant, because he had far more seniority?

SUMMARY: Grievant contends that he should have been selected for a Supervisor 1 position in the Housekeeping department. He believed that his 24 years of employment as a housekeeper at the facility made him more qualified than the successful applicant, who had only been employed at Hopemont for seven years. However, seniority is not required to be the determinative factor when the applicants are not similarly qualified, and Respondent established that the successful applicant demonstrated superior qualities as a supervisor and had a far better interview than Grievant. The Grievance Board has previously recognized that, when selecting supervisors, employers may consider qualifications that are deemed to be specifically pertinent to that type of position. Grievance DENIED.

KEYWORDS: SUSPENSION; MITIGATION; DISCRIMINATION; HARASSMENT; RETALIATION; INSUBORDINATION; CONFRONTATION WITH SUPERVISOR; DISRESPECTFUL BEHAVIOR; EXPENSES AND ATTORNEY FEES

CASE STYLE: COSNER v. DEPARTMENT OF HEALTH AND HUMAN RESOURCES/WILLIAM R. SHARPE JR. HOSPITAL

DOCKET NO. 08-HHR-008 (12/30/2008)

PRIMARY ISSUES: Whether Respondent proved the charges against Grievant, and whether the penalty should be mitigated.

SUMMARY: Grievant was suspended for one day without pay for three incidents which occurred within a few days of each other. Respondent did not prove one of the charges. The remaining two charges were proven. However, the second charge was that Grievant became loud and disruptive during a meeting conducted by his supervisor, something which other employees had also done in the past. No other employee had been disciplined in any way for becoming loud during a meeting, or otherwise confronting his supervisor in the presence of other employees. Grievant could not be treated differently from other employees.

The remaining charge was that Grievant had dumped his prescription medication, consisting of approximately 20 pills, on his supervisor's desk, and left; and then later, after the pills were returned to Grievant, he brought them back to his supervisor and demanded that he guarantee they had not been tampered with. Grievant believed the penalty imposed upon him was discriminatory, retaliatory, and constituted harassment. Grievant's behavior was inappropriate, created unnecessary concerns and risks for his supervisor, and was certainly deserving of some punishment. Grievant did not demonstrate that the penalty imposed was clearly excessive. Grievance DENIED.

KEYWORDS: TIMELINESS; EXCUSE; DELAY; EMPLOYER REPRESENTATION; CREDIBILITY

CASE STYLE: YOUNG v. DIVISION OF CORRECTIONS/ANTHONY CORRECTIONAL CENTER

DOCKET NO. 2009-0599-MAPS (12/15/2008)

PRIMARY ISSUES: Should the grievance be dismissed as untimely filed?

SUMMARY: Grievant was terminated from her employment by letter dated September 5, 2008. This letter informed Grievant that she was being immediately separated from the workplace, but that she would be compensated for the 15-day notice period provided for by the Division of Personnel's Rule. Also, pursuant to the 15-day required notice, the termination letter advised Grievant that her termination would be effective on September 20, 2008, and that she must file a grievance within 15 days after the effective date of her termination.

Grievant was confused regarding the applicable time limit for filing a grievance, and testified that she had a telephone conversation with an unidentified person regarding her rights. First she stated this person worked for the Grievance Board, then stated he was with the Division of Personnel, and finally alleged that he answered the phone in the Division of Corrections' Human Resources office. Grievant alleged this unidentified person told her that she had thirty days to file a grievance after the effective date of her termination on September 20.

Grievant's statements were found not to be credible, and the termination letter was clear regarding her time limits for filing a grievance. She has failed to provide sufficient justification for her delay in filing this grievance on October 27, 2008. Grievance DISMISSED.

KEYWORDS: TIMELINESS; EXCUSE; IGNORANCE OF THE LAW

CASE STYLE: PISINO v. DIVISION OF CORRECTIONS/PRUNTYTOWN CORRECTIONAL CENTER

DOCKET NO. 2009-0539-MAPS (12/15/2008)

PRIMARY ISSUES: Should the grievance be dismissed as untimely filed?

SUMMARY: Grievant resigned from her employment as Kitchen Supervisor at Pruntytown Correctional Center on September 17, 2008. She filed a grievance on October 21, 2008, alleging she was required to resign or be terminated for misconduct. Pursuant to the statutory requirements for filing grievances, Grievant had fifteen days from the grievable event to file her claim, which would have been on October 8, 2008. Grievant's only explanation for not filing within the statutory timeframe was that, due to her apparent misunderstanding of the law, she believed she had 30 days to file the grievance. Generally, the Grievance Board has recognized that ignorance of the law does not excuse such a delay, so the grievance is DISMISSED.